U.S. Department of Justice

Immigration and Naturalization Service

B 2

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

File: WAC 98 227 50346 Office: California Service Center Date: SEP 19 2000

IN RE: Petitioner:
Beneficiary: [redacted]

Petition: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(1)(A)

Public Copy

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Terrance M. O'Reilly, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, California Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(1)(A), as an alien of extraordinary ability in the sciences. The director determined the petitioner had not established the sustained national or international acclaim necessary to qualify for classification as an alien of extraordinary ability.

Section 203(b) of the Act states, in pertinent part, that:

> (1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):
>
> > (A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --
> >
> > > (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
> > >
> > > (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
> > >
> > > (iii) the alien's entry to the United States will substantially benefit prospectively the United States.

As used in this section, the term "extraordinary ability" means a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor. 8 C.F.R. 204.5(h)(2). The specific requirements for supporting documents to establish that an alien has sustained national or international acclaim and recognition in his or her field of expertise are set forth in the Service regulation at 8 C.F.R. 204.5(h)(3). The relevant criteria will be addressed below. It should be reiterated, however, that the petitioner must show that he has sustained national or international acclaim at the very top level.

This petition seeks to classify the petitioner as an alien with extraordinary ability as a senior digital signal processing engineer at [redacted] Semiconductor, Inc., Sunnyvale, California. The regulation at 8 C.F.R. 204.5(h)(3) indicates that an alien can establish sustained national or international acclaim through evidence of a one-time achievement (that is, a major, international recognized award). Barring the alien's receipt of such an award,

the regulation outlines ten criteria, at least three of which must be satisfied for an alien to establish the sustained acclaim necessary to qualify as an alien of extraordinary ability. The petitioner has submitted evidence which, he claims, meets the following criteria.

Evidence of the alien's participation, either individually or on a panel, as a judge of the work of others in the same or an allied field of specification for which classification is sought.

The petitioner has reviewed papers submitted for presentation at conferences. The record is silent as to the number of reviewers participating in these events, or how the reviewers were chosen. One communication from a conference organizer suggests that the petitioner was asked to review a paper because the petitioner himself had submitted a paper for presentation at the conference.

Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

Counsel states:

> [The petitioner] has performed original research resulting in a significant high-technological advancement. [The petitioner] led a project funded by NASA, Hitachi Ltd., Seagate, Motorola, and Northern Telecom. This research focused on applying advanced signal processing technology for high-density, high-speed magnetic data storage. During that time, [the petitioner] developed the "complement-State Grouping Technology" which was a major breakthrough in the area of the reduced-complexity Viterbi detector, a widely used data-recovering scheme for many data transmission systems because of its maximum likelihood performance.

Counsel adds that "2 patents based on the invention have been filed." Patent filing proves nothing, as anyone can apply for a patent. Even if the patents were approved, a patent demonstrates originality but not significance. A patent is a form of commercial protection for an inventor, rather than a prize for significant contributions. The source of the petitioner's funding is likewise irrelevant, because such funding is (and must be) obtained before a project commences; it is obviously too early to discern the significance of work which has yet to begin.

Counsel also notes that the petitioner has "develop[ed] a nonrecursive algorithm" to resolve "the speed bottleneck of Viterbi detectors." Counsel states "[t]his contribution has had a major impact on the high-speed detector for magnetic recording channels and resulted in [a journal] publication." Counsel does not specify the "major impact" which the petitioner's work has had, nor does

counsel offer any corroboration for the implied argument that only "major" contributions result in published articles.

To demonstrate that the petitioner's work represents "a major breakthrough," the petitioner must submit documentation establishing the significance of this work. The opinion of counsel (who is paid to seek approval of the petition) cannot suffice in this respect. The assertions of counsel do not constitute evidence. Matter of Laureano, 19 I&N Dec. 1, 3 (BIA 1983); Matter of Obaigbena, 19 I&N Dec. 533, 534 (BIA 1988); Matter of Ramirez-Sanchez, 17 I&N Dec. 503, 506 (BIA 1980).

To support the claim that his work is of major significance, the petitioner submits letters from several witnesses. These witnesses represent the petitioner's current and former employers; an official of a company which funded his research; former collaborators; and faculty members of the University of Oklahoma, where the petitioner had studied for his doctorate. Given that the petitioner has worked directly with these witnesses, their letters do not indicate that the petitioner is recognized throughout the industry at a national or international level. If the petitioner's work is familiar only to his professors, collaborators and employers, then the petitioner does not enjoy national or international acclaim at the top of his field. These witnesses repeat that the petitioner's work represents "a major breakthrough," but they produce no evidence that the petitioner's innovations have been widely adopted, or have shaped the semiconductor industry.

Evidence of the alien's authorship of scholarly articles in the field, in professional or major trade publications or other major media.

The petitioner has co-written five articles and two conference presentations. The record offers no indication as to how this publication record compares with the output of others in the field. Publication of one's work does not inherently place one at the top of the field; rather, the petitioner must show that his published work stands above that of others. Such influence can be established in various ways, such as evidence showing that the petitioner's work is among the most heavily cited in the field. Articles have influence not when they are published, but when they are read and utilized by others.

Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Counsel states that the petitioner "played a critical role for the *1996 Global Telecommunications Conference*," by acting "as a reviewer for this conference which is the most important conference on communications and signal processing internationally." This reviewing work has already been addressed above, pertaining to

judging the work of others. There is no indication that the petitioner has played an ongoing role for the organizers of the conference.

Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

Counsel notes that Marvell Semiconductor, Inc., Sunnyvale, California, pays the petitioner $80,000 per year plus stock options. The burden is on the petitioner to establish that this amount is significantly higher that the remuneration paid to most others in the field. The plain wording of the regulation demands evidence that the petitioner's salary is "significantly high . . . in relation to others in the field." The petitioner's salary, standing alone, offers no insight as to how that salary compares "in relation to others in the field."

The director denied the petition, noting that the petitioner had received his Ph.D. only the year before he filed the petition. The director also observed that the petitioner has failed to show that review of manuscripts is reserved for the top figures in the field, rather than a routine courtesy within the field. The director also stated that participation in grant-funded research is not indicative of a rare level of expertise and acclaim. Finally, the director noted that the petitioner's witnesses all have significant levels of prior contact with the petitioner, and that therefore their letters do not show that the petitioner's work is known and acknowledged throughout the field.

On appeal, counsel cites a previously submitted letter "from the Editor-in-Chief of the IEEE Transactions on Vehicular Technology," who stated that the petitioner's "expertise . . . warranted his appointment" as a manuscript reviewer. Counsel here fails to acknowledge the highly relevant fact that "the Editor-in-Chief" of the journal in question is also one of the petitioner's former professors at the University of Oklahoma, who collaborated with the petitioner on several published papers. An invitation from one's own professor, or former professor, is not tantamount to national recognition.

With regard to the petitioner's publication history and original contributions, counsel accuses the director of dismissing this evidence out of hand. Counsel maintains that this evidence supports a finding of extraordinary ability, but counsel cites no objective documentary evidence that would elevate the petitioner's publications and contributions above those of others in the field.

Counsel does not address the director's findings regarding the petitioner's claims of an extraordinarily high salary, or a leading and critical role for a distinguished organization or establishment. In effect, counsel has conceded these points.

Counsel concludes with a discussion of "[t]he importance of information sciences and technology." Counsel maintains that the evidence places the petitioner at the top of his field, but counsel offers no persuasive explanation for how this is so. Instead, counsel seems to rely on a basically circular argument to the effect that anyone who has done what the petitioner has done must be at the top of his field.

To qualify for this highly restrictive visa classification, the petitioner must show that almost none of his colleagues have reached his level of achievement. The petitioner must show that he is among the best known, most acclaimed figures in his field nationally or internationally. The petitioner has failed to submit persuasive evidence to meet this standard. The petitioner has submitted ample evidence that he has been active in his field, but rather than submitting evidence which plainly shows that the petitioner is widely known in his field, he submits ambiguous evidence along with arguments from counsel intended to demonstrate that this evidence establishes the petitioner's eligibility. Nothing in the record elevates the petitioner above his peers to the extent that the statute and regulations demand.

The documentation submitted in support of a claim of extraordinary ability must clearly demonstrate that the alien has achieved sustained national or international acclaim, is one of the small percentage who has risen to the very top of the field of endeavor, and that the alien's entry into the United States will substantially benefit prospectively the United States.

Review of the record, however, does not establish that the petitioner has distinguished himself in his field to such an extent that he may be said to have achieved sustained national or international acclaim or to be within the small percentage at the very top of that field. The evidence indicates that the petitioner shows talent as an engineer, but is not persuasive that the petitioner's achievements set him significantly above almost all others in his field. Therefore, the petitioner has not established eligibility pursuant to section 203(b)(1)(A) of the Act and the petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. Here, the petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.